



Sweeping Legislative Changes Affect Mortgage Loan Officers

The recent passage of House Bill 277, sponsored by Rep. J. Morgan Philpot, a Utah registered mortgage lender, makes significant changes to the Utah Residential Mortgage Lenders Practices Act. **This legislation takes effect January 1, 2004.** Notable changes to the statute include the following:

- A mortgage "registration" will be changed to a mortgage "license." Those holding a mortgage registration will now hold a mortgage license.
- Loan "processors" are no longer required to be licensed unless they are **actually** originating loans.
- Membership in The Residential Mortgage Regulatory Commission has been changed from two to three commission members that are licensed under the act, with at least three years residential mortgage lending experience.
- Allows the members of The Residential Mortgage Regulatory Commission to establish continuing education requirements, including the number of continuing education hours required for license renewal.
- First time licensees *after* January 1, 2004 must pass a state competency exam prior to licensure.
- All licensees and individuals licensed *before* January 1, 2004 have until January 1, 2005 to pass a state competency exam.
- Continuing education courses and the state licensing exam will be available on the Internet when reasonably practicable.

"...these changes are likely to better protect the public and generally increase the qualifications of mortgage lenders."

- Mortgage licensees may *only* perform mortgage loans for one mortgage entity at any given time. Division procedures will be established for a licensee to change their affiliation from one entity to another.
- Mortgage licensees who also hold a contractor's, real estate, escrow officer, or appraiser's license, *may not* use both licenses *in the same transaction*. The licensed activity of *unrelated transactions* is not affected.
- Mortgage licensees are prohibited from ordering or holding a title report without showing their mortgage license to the title company.
- The maximum civil penalty for violations was raised to \$2,500.

As you can see, this legislation makes dramatic changes to the regulation of the residential mortgage industry. The Division believes that these changes are likely to better protect the public and generally increase the qualifications of mortgage lenders.

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Mortgage Bankers Begin Self-Police Campaign

by M. Anthony Carr

I had a colleague call me with a peculiar, but unfortunately, not so uncommon story about how several lenders were asking her to provide false information on her mortgage application. As she is wanting to move into a new home first, then sell her current home, she would need what is called a "bridge" loan, where she would make payments on both houses with one loan until the old home is sold.



A bridge loan isn't used that often, but even so, three of four lenders she talked with asked her to supply them with a letter stating that she and her husband had rented out the first home and thus the loan would be approved. One problem - there was no renter. It would be a complete fabrication.

A single parent I know was asked by her then-separated husband to write a letter stating she was receiving less money per month for spousal and child support than she actually received, so that the estranged spouse would be able to qualify for a larger loan. The borrower was prompted to get the letter from his wife by his loan officer.

Both of these are instances of fraudulent loan practices. Bottom line - the loan professionals aren't acting very professionally and are putting their customers at risk if their loan application ever gets audited. Of course, the borrower is the one submitting both of the documents, so the burden of proof falls on them to prove it's true. Saying to an investigator "the loan officer made me do it," just won't cut it.

The Mortgage Bankers Association of America recently launched an education campaign called Stop Mortgage Fraud. The campaign has elicited endorsements from both the U.S. Conference of Mayors and the Department of Housing and Urban Development.

The examples above fall in the first sign of fraud: Were you encouraged to include false information on your loan application? Below are a few more of them that could point to fraudulent practices by the lender.

Were you asked to leave signature lines or any other important line-item of any form blank? Did the lender or broker alter any information you entered on your loan application?

Are all the required disclosures in your file? If you are missing the Good Faith Estimate, Special Information Booklet, Truth in Lending or HUD-1 Settlement Statement, contact your lender to have these forms included in your file. After

refinancing your loan several times, does the monthly payment keep increasing or the total amount owed keep rising?

Did you incur any unexpected costs at settlement that were not explained to you prior to settlement?

After settlement, were you surprised to find the monthly payments on your mortgage loan were higher than you anticipated based on the initial disclosures?

Obviously, at times, there is human error involved in the loan application pro-

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cess. When you're faced with a couple inches deep of papers to sign, it's not unusual to glide over a form without getting a signature in place. A busy lender may have a form missing from his package that he didn't know was missing, thus asking you to fill it out later. However, if their mistake ends up costing you money - that could be a sign that the missing signature or paperwork was intentional to unfairly push up their profit margin at your expense.

If you think you've been victimized by an errant loan officer, you're no longer out of luck. MBAA has established a Web site where consumers can report abusive lending practices.

Visit www.stopmortgagefraud.com or call 800/348-3931 to get information on what steps to take to file a complaint.

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Please Note

Utah Code 61-2-1 prohibits anyone from advertising a house for sale who is not a licensed real estate broker or sales agent.

Mortgage financing advertising on "HOME FOR SALE" signs must make it clear that what is being advertised is the mortgage financing, not the house itself.

Clearly, mortgage brokers who show, advertise, or sell houses (as opposed to mortgage financing) without a real estate license are in violation of the law and will be disciplined.

Mortgages: Predatory Lending; Falsified Applications

In a case of interest, a Georgia State Appeals Court held that mortgage lenders in Georgia have a duty to evaluate a mortgage borrower's ability to repay the mortgage loan being extended.

In *Nocorpus v. Albatross Federal S&L Assoc.*, 432 S.E.2d 999 (Ga. App. 2002), a borrower applied for a mortgage loan to refinance a variety of personal debts. Borrower's home had gone up in value, and was worth over \$300,000, with an equity of about \$200,000. But borrower had lost her job and was working through a temp agency. Borrower's income was under \$2000 per month, and he had car payments of \$400 per month, and numerous other debtors. Borrower went to see a mortgage broker who told borrower that she could finance her house and car and other debts, and make payments of \$1722 per month on a loan of \$200,000. Borrower agreed to do this.

At the time of the initial interview, mortgage broker made all required disclosures, including a disclosure that the borrower would charge a loan fee of 4 points along with various miscellaneous handling fees. The written disclosure indicated that refinancing would pay some, but not all debts, that the interest rate would adjust annually, and that the first adjustment, even if just to current market, would increase the rate by 1.5%.

Borrower initialed all the disclosures provided to her, but later claimed that she was very emotional, completely trusting of the mortgage broker, and read nothing that she signed. She claimed that the mortgage broker led

her to believe that she was getting a fixed rate loan and that all her debts would be paid from the proceeds. She never did the math to determine that this was impossible. She also claimed that she thought that the payments would be \$1410 per month (the difference between \$1400 per month and the \$1772 figure represented tax and insurance escrows).

Also at the original interview, mortgage broker filled out a loan application based upon verbal response to questions from borrower, and gave her the application to sign. Again, borrower did not read the application. In fact, the application showed borrower's previous salary at the job she had lost, misrepresented her assets by more than double, including counting her 410K account both as a bank account and a pension asset, and failed to disclose personal debts to borrower's parents, represented by formal debt instruments, that borrower claimed to have disclosed to the mortgage broker (and that borrower claimed she expected to be paid from the refinancing).

At the loan closing, borrower asked the escrow officer if certain debts, including those to her parents, were being paid from loan proceeds. The officer had no instructions to pay such debts, and had no surplus from the loan proceeds after paying other debts in

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Mortgages: Predatory Lending

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the escrow instructions, but the officer simply indicated that Borrower should check this out with the mortgage broker. In addition, borrower was asked to execute an “amended and updated” loan application, which was even more distorted than the one she had originally signed. She commented to the escrow agent that this didn’t look like her asset and income statements, and asked if she should mark it up to reflect lower income and assets. The agent replied that if she changed the documents, the agent would not be able to close that day, and that the borrower might not get the loan at all. Borrower, assuming that the agent had filled out the application properly, and that she simply didn’t understand what all the terms meant, signed everything.

Borrower subsequently discovered that approximately \$400 per month in obligations had not been refinanced, including the debt to her parents. She nevertheless struggled forward for a while, making mortgage loan payments for about six months before she finally defaulted.

Ultimately, the lender foreclosed on the home. Borrower alleged that the lender bid in the \$235,000 outstanding indebtedness and acquired the home for \$70,000 less than the fair market value. Borrower further alleged that the mortgage broker had fraudulently induced Borrower to take out a loan which she had no hope of paying, and that it had done so with the complicity of both the escrow agent and the funding lender, because both of the latter parties knew or should have known the true status of Borrower’s finances and that she was not in a position to make the payments to which she had committed.

The trial court granted summary judgment to both the escrow agent and the funding lender, and ordered a trial on the fraud counts against the mortgage broker. The appellate court reversed.

The court noted that the lender had engaged in a regular course of dealing with the mortgage broker, dictated the mortgage forms that the broker should use (the standard FNMA/FHLMC instruments) and the other underwriting forms, and consequently was “closely connected” to the mortgage broker. Although the court acknowledged that such a relationship in the past might not have resulted in

vicarious liability for fraud on the part of the mortgage broker, the court concluded that a broader liability was called for in modern consumer finance. Lenders have a duty of care to consumer borrowers to evaluate loan applications to verify that they are accurate and fully support the requested credit.

Characterizing home borrowers as “lambs delivered for slaughter,” the court noted that the phenomenon of borrowers over-committing to debts due to mortgage broker inducement was a widespread and serious problem of “predatory lending,” and that parties in the mortgage lending business had a responsibility to protect the public from overzealous agents. It noted that the default rate on loans initiated by this broker had been almost double the lender’s overall average during the preceding three years. It commented:

“Whether lenders admit it or not, consumer borrowers expect lenders to be experts on the issue of whether borrowers can afford a loan. They rely on lenders to ask the right questions and to develop an accurate assessment of borrower’s financial picture...if lender’s inspection of this file did not disclose to the lender the fact that the borrower was not currently employed by [the indicated employer at the indicated salary] and that borrower’s assets were woefully short of the indicated total, then that investigation was prima facie negligent and fell far short of lender’s duty to borrower to evaluate her credit potential.”

The court was even more pointed about the behavior of the escrow agent. Aside from the allegedly fraudulent mortgage broker, the court noted, the escrow agent was the only professional party with whom the borrower had any contact.

“Escrow agents know that consumers view them as professionals familiar with the mysteries of the lending process and capable of identifying defects in the process. Borrowers are entitled to expect that escrow agents will responsibly advise them when uncertainties exist, and warn them about dangers that are reasonable evident to a seasoned professional.”

Here, the court indicated that the borrower had made a more than adequate case that the escrow agent had re-

ceived “signals” that something was amiss in the loan application and that borrower was a victim of predatory lending.

Because of breach of these professional duties, the court concluded borrower had made out a claim of tortious negligence against the escrow agent. The court noted that other “involved professionals,” with whom the borrower might interact, such as real estate brokers and attorneys, might also have similar duties of care in Georgia.

As to the lender, the appeals court further held that the trial court could conclude that the lender’s failure to exercise “supervision and oversight” over the mortgage broker made the broker the “alter ego” of the lender, and consequently the lender would be liable vicariously for the broker’s fraud, including borrower’s emotional distress and punitive damages.

The case was remanded for a jury trial to determine whether the mortgage lender and escrow agent had met the standards the appellate court set forth in its opinion.

Reporting Changes

Registered individuals have an obligation to notify the Division within 10 days of the date in which there is a change in any of the following categories. The notification must be in writing and signed.

- Your name or personal address (must be a physical address, not a Post Office box, etc.)

Remember, an individual or entity will be considered to have received any notification that is mailed to the last address furnished to the division!

Business addresses and phone numbers are public information; home addresses and phone numbers are private, UNLESS you only provide your home information, in which case it will be public.

- Entity change (also requires current entity address)

For entity changes you must also provide evidence that you are covered by the new entity’s surety bond (unless you have an individual surety bond).

- Control person
- Individual or entity bond cancellation
- Notification of any criminal offense
- Notification of personal bankruptcy or bankruptcy of a registered business entity

Remember - failure to notify the Division constitutes grounds for disciplinary action.

HUD Announces Home Buyer Bill of Rights

WASHINGTON - The Department of Housing and Urban Development has announced its intent to establish a “Home Buyer’s Bill of Rights” - a proposal that could significantly rewrite the Real Estate Settlement Procedures Act - in an effort to take the confusion out of the fees charged to home buyers.

Housing Secretary Mel Martinez argues that consumers are entitled to know how much they are going to be paying in fees when they go to close and should not be surprised by having to come up with additional funds.

The initiative is part of the Bush Administration’s effort to improve home ownership among minorities. Requiring lenders and mortgage brokers to guarantee closing cost estimates would allow consumers to shop around for the best deal. The proposal would allow lenders to package services to home buyers.

There are many issues surrounding the proposal, not the least of which is whether real estate brokerages - which have been at the forefront of efforts to give consumers a one-stop shopping experience - will be allowed to participate in the bundling of services.

Real Estate Intelligence Report 07/01/02

**“I’m having amnesia
and deja vu.
I think I’ve forgotten
this before.”**

~ Ben Wismer, age 13

Mortgage Registration Disciplinary Sanctions



ANKERS, RICHARD EARLE, Draper. Registration automatically revoked effective February 20, 2002 for failure to accurately disclose criminal history on application for registration.

BLAIR, A. ERIC, Sandy. Registration revoked effective January 8, 2003 because of three felony convictions. #MG02-04-02.

BRAMHALL, EARL and DEFAULT-TO-NEW MORTGAGE, Taylorsville. Application for registration denied on August 7, 2002, because of the fact that Default-to-New Mortgage no longer exists and on the fact that Mr. Bramhall defaulted and did not participate in a required prehearing conference.

BRAMHALL, EARL, Taylorsville. Cease and Desist Order issued May 14, 2002, for functioning in a management position for New Start Mortgage, LLC of Taylorsville, taking an application for a residential mortgage loan on behalf of New Start Mortgage,

LLC, and representing that he was a "mortgage broker," among other things. A hearing on the issuance of the Cease and Desist Order has been held but no decision has yet been issued. #MG02-05-01.

CREDILLE, DARREL and PIONEER MORTGAGE BROKERS, Clearfield. Registrations automatically revoked effective February 15, 2002 for failure to accurately disclose criminal history on application for registration.

DUKE, DAVID V., Pleasant Grove. Initial registration granted on probationary status because of a past criminal conviction.

GRIEVE, THOMAS H., Cedar Hills, LAKESIDE LENDING, LLC, Orem and GRANITE FUNDING, LLC, Orem. In lieu of continuing to respond to the Division's investigation of complaints, Mr. Grieve surrendered his registration and those of Lakeside Lending, LLC and Granite Funding, LLC effective May 1, 2002. Mr. Grieve agreed that neither he nor the entities would apply for a new registration for at least

five years and that he will not own or manage an entity whose primary business is the making of residential mortgage loans in Utah for that same period of time. #MG02-02-02, MG02-02-03.

HONEY, GEORGE, Salt Lake City. Agreed to surrender his registration effective September 4, 2002, for failing to disclose to the Division on his application for registration that he had entered a guilty plea, to be held in abeyance, to a criminal charge.

HOUSEKEEPER, SPENCER, Orem. Initial registration granted on probationary status because of a past criminal conviction, but then suspended because Mr. Housekeeper is still on criminal probation. His registration will be suspended until such time as his fines and any other court-ordered payments have been paid in full, and he is released from probation.

INCE, PAUL R., Holladay. Registered on probationary status because of the

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Record Keeping (Who , What, How, Why and When)

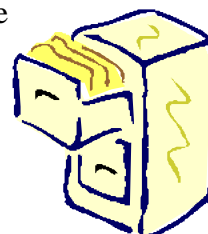
Any individual or entity who is registered shall make their complete and entire records available to the Division until *four years* from the last to occur of the following:

- ❖ The final entry on a residential mortgage loan made by a registrant;

- ❖ If the residential mortgage loan is serviced by the registrant:

- The residential mortgage loan is paid in full; or
- The registrant ceases to service the residential mortgage loan; or

- If the residential mortgage loan is not serviced by the registrant, the residential mortgage loan is closed.



circumstances underlying his 1996 disbarment as an attorney.

JACOBSON, JACOB F., Control Person, Frontier Funding Group, Inc., Ogden. Agreed to pay a \$1,500 fine and complete a real estate ethics course for: a) permitting an unregistered person to act as a loan officer for Frontier Funding Group, Inc.; b) failing to maintain the records required by the Mortgage Practices Act; and c) a transaction in which he knew that the prospective purchaser of a property, the unregistered loan officer, was attempting to obtain a loan through Frontier Funding Group, Inc. in the name of her brother to use to purchase the property. #MG01-02-13.

JORGENSEN, BRADLEY J., Salt Lake City. Registration issued on probationary status for two years because of 1988 loss of insurance license for conversion of funds held in a fiduciary capacity, 1996 denial of an application for a real estate license, and a large civil judgment obtained by the parties whose funds were converted that was not fully paid. In mitigation, a long time has passed with no further offenses, and Mr. Jorgensen and the parties whose funds were converted have settled the matter.

KIMBALL, KRIS, Sandy. Registration approved on probationary status because of two 1999 felony criminal convictions. His registration will be on probationary status until his first renewal.

KIPP, BRUCE, Park City. Agreed to pay a \$500 fine for failing to comply with the Utah Residential Mortgage Practices Act. Mr. Kipp took a buyer's loan application in January 2001 and the transaction closed in February 2001. Mr. Kipp did not apply to the Division to register under the Act until July 9, 2001. Mr. Kipp maintains that he did not become aware that he was required to register until shortly before he applied to register. #MG01-10-08.

KISSEL, TRINA, Control Person, Desert West Financial Group, Inc., West Jordan. Agreed to pay a \$500 fine for allowing Raymond J. Kissel to act as a loan originator without a registration. The Division received a consumer complaint in October 2001 concerning a loan application that had been handled by Raymond J. Kissel. Neither Raymond nor Trina Kissel were able to produce for the Division's inspection the consumer's loan application or a loan denial statement they claimed had been sent to the consumer in January 2001. #MG01-10-12.

LIVINGSTON, JULIA, Provo. Agreed to pay a \$500 fine for suggesting to a seller that the sales price of a property might be increased in an amount equal to a seller carryback to be forgiven after closing. In mitigation, the transaction failed and no loan was made on the transaction.

MADDOX, DAVID R., South Jordan. Registration granted on probationary status until first renewal because of suspension from the practice of law.

MILLWARD, RICHARD D., Salt Lake City. Registration renewed on probationary status because of improper acts and violations as a real estate broker, as set forth in the Stipulation and Agreement and Order in Case Numbers RE96-12-07 and RE20-03-16.

PEARCE, DOUG, Taylorsville. Application for registration denied because of a recent criminal conviction and the fact that restitution has not been made.

SMITH, CLAUDIA, Orem. Agreed to pay a \$1,000 fine for engaging in the business of residential mortgage loans before she registered with the Division and for depositing a check from mortgage applicants into her own personal account. After the applicants were unable to obtain a loan, a dispute developed over whether Ms. Smith was entitled to keep any of the funds from the check. Ms. Smith refunded the full amount of the check after her supervisor indicated that it was not his company policy to charge applicants for copies, telephone calls, and mileage. #MG02-12-03.

De Minimus Rule Changed

Mortgage Rule R162-202-1 ("De Minimus") has been repealed. This rule defined "de minimus" for the purpose of compensation for referrals of mortgage business as not exceeding \$50.

The federal Real Estate Settlement Procedures Act (RESPA) prohibits any payment for referral of federally-related mortgage business, even "de minimus" payment. The need for a specific Administrative Rule was therefore unnecessary.

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Home Buyer's Mortgage Brochure

For an excellent brochure advising prospective home buyers on how to make informed mortgage credit decisions, please see the Division's website at www.commerce.utah.gov/dre. The brochure is produced by the American Financial Services Association, the American Association of Residential Mortgage Regulators, and the National Association of Consumer Credit Administrators.